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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION
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14 Donald McDavid,) CV-11-05596 ODW (AJWx)
15)
16 Plaintiff,)
17 v.) Order **DENYING** Plaintiff's
18 Wells Fargo Bank, N.A., et al.,) Application for Temporary Restraining
19 Defendants.) Order [1] [Filed 07/07/11]

20 This matter is before the Court on Plaintiff Donald McDavid's ("Plaintiff")
21 Application for Temporary Restraining Order filed on July 7, 2011 ("Application")
22 against Defendants Wells Fargo Bank, N.A. and Fidelity National Title Insurance
23 Company (collectively, "Defendants"). The Court finds this Application appropriate for
24 decision without oral argument. *See* Fed. R. Civ. P. 78. For the following reasons, the
25 Court **DENIES** Plaintiff's Application.

26 Plaintiff alleges that Defendant Fidelity National Title Insurance Company
27 ("Fidelity") through its agent, Mortgage Electronic Registration Systems ("MERS"),
28 instituted a non-judicial foreclosure proceeding as to the Plaintiff's property located at

1 419 E. Mountain Street, Glendale, CA 91207 (the “Property”). Plaintiff, however, alleges
2 that MERS did not have any interest in the mortgage of the Property, and as such,
3 Defendant Fidelity did not have standing to institute the foreclosure sale. Plaintiff
4 brought the instant action against Defendants alleging: (1) violation of the Consumer
5 Protection Act; (2) violation of the Truth in Lending Act (“TILA”); (3) fraud; and (4)
6 breach of fiduciary duty.

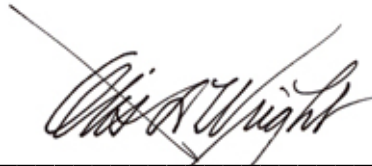
7 “The standard for issuing a temporary restraining order is identical to the standard
8 for issuing a preliminary injunction.” *Lockheed Missile & Space Co., Inc. v. Hughes*
9 *Aircraft Co.*, 887 F. Supp. 1320, 1323 (N.D. Cal. 1995); *see also Arcamuzi v. Cont’l Air*
10 *Lines, Inc.*, 819 F.2d 935, 937 (9th Cir. 1987) (applying same standard for a preliminary
11 injunction). A plaintiff seeking a preliminary injunction must establish that: (1) he is
12 likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence
13 of preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is
14 in the public interest. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 129 S.Ct. 365, 374
15 (2008). In the Ninth Circuit, a preliminary injunction is also appropriate if the plaintiff
16 can show that “serious questions going to the merits were raised and the balance of
17 hardship tips sharply towards the plaintiff’s favor.” *Alliance for the Wild Rockies v.*
18 *Cottrell*, 622 F.3d 1045, 1052 (9th Cir. 2010) (holding that the sliding scale test remains
19 viable so long as plaintiff can satisfy other factors contained in *Winter*) (citation omitted).

20 Plaintiff argues that the Court should enter an order cancelling the foreclosure sale
21 because Defendant Fidelity has not demonstrated a sufficient personal stake in the matter
22 and does not have legal standing to institute the foreclosure sale of the Property. As
23 such, Plaintiff argues that Defendant Fidelity has not suffered an actual or threatened
24 injury as a consequence of any default. However, Plaintiff has failed to demonstrate that
25 MERS did not have an interest in Plaintiff’s mortgage of the Property and that Defendant
26 Fidelity did not have the authority to institute a foreclosure sale. Moreover, Plaintiff has
27 failed to demonstrate the likelihood of success on Plaintiff’s claims based on the
28 Consumer Protection Act; TILA, Fraud; and breach of fiduciary duty.

1 Accordingly, the Court **DENIES** Plaintiff's Application for Temporary Restraining
2 Order.

3 **IT IS SO ORDERED.**

4 August 19, 2011

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8 HON. OTIS D. WRIGHT, II
9 UNITED STATES DISTRICT JUDGE
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